

ISSUE 73: UNE Platform

A. New UNE Combinations - Product Issue

WorldCom, joined by other CLECs, has argued that the Commission should decide in this proceeding whether Ameritech Illinois can be required, consistent with the 1996 Act, to combine UNEs for CLECs. Staff and Ameritech Illinois disagreed, stating that the issue lies beyond the scope of this OSS collaborative proceeding. The HEPO agreed with Staff and Ameritech Illinois, stating, “[w]e share Staff and AI’s view that the CLECs raise an issue here that is flatly outside the scope of this proceeding. Nothing more needs to be said on this point.” HEPO, at 99.

The CLECs challenge this finding by repeating the same arguments from their prior briefs, which remain unavailing. (Note that the very same arguments failed with respect to line splitting (Issue 74) and none of the CLECs challenges the HEPO’s conclusion on that point.) The core of the CLECs’ argument is that OSS issues would need to be resolved *if* Ameritech Illinois were required to combine UNEs for CLECs. In other words, the CLECs’ theory is that because products have to be ordered, and ordering involves OSS, any and all product-definition issues fall within this docket. *See* AT&T Exc. at 41-42. But that puts the cart before the horse. Until it is legally determined that the 1996 Act allows an agency to require Ameritech Illinois to do such combining (which could occur *only* if the Supreme Court reverses the Eighth Circuit on this issue), there is no reason to delve into OSS disputes that may never be relevant, and doing so here would result in, at best, an illegal advisory opinion. *See, e.g., Harrisonville Tel. Co. v. Commerce Comm’n*, 176 Ill. App. 3d 389, 392-93 (5th Dist. 1988).^{24/}

^{24/} The CLECs also try to argue that this issue should be addressed because it has competitive significance for the residential market. AT&T Exc. at 40, 43-44; Jt. Small CLEC Exc. at 86. Such a claim, of course, completely ignores that Ameritech Illinois already combines UNEs to serve

Moreover, the HEPO's view that the issue belongs elsewhere has since been confirmed by the Commission itself. As the CLECs' Exceptions make clear, their main concern is with new and second lines provided as a new UNE platform. AT&T Exc. at 43; Jt. Small CLEC Exc. at 85. On November 1, 2000, the Commission initiated a proceeding to investigate Ameritech Illinois' new shared transport tariff and indicated that one of the issues to be taken up in that case is whether Ameritech Illinois can be required to combine UNEs for CLECs that order new or second lines. Order, Ill. C.C. Dkt. No. 00-0700, at 3 (Nov. 1, 2000).^{25/} This reinforces the HEPO's conclusion that issues regarding new UNE combinations are beyond the scope of this proceeding.

Ameritech Illinois' arguments on the merits of the CLEC proposal are set out in its Post-Hearing Comments (at 113-23) and need not be repeated here. The CLEC proposal ultimately boils down to this: the language of the 1996 Act applies differently to state commissions and the FCC, even on the same issues. That position, of course, is absurd as a matter of law – the plain language of the 1996 Act is the same for both state commissions and the FCC, and, indeed, state commissions get *less* deference than the FCC on matters of interpretation of the Act. *See, e.g., GTE South, Inc. v. Morrison*, 199 F.3d 733, 745 (4th Cir. 1999). No party can or does dispute that the Eighth Circuit's decision in *Iowa Utilis. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000) that the "plain language" of Section 251(c)(3) prohibits any requirement that incumbent LECs combine UNEs for CLECs applies to the FCC nationwide. *Id.* at 758-59. Thus, the FCC cannot require incumbent LECs to

certain residential customers under the terms of a promotional offering made pursuant to the *FCC Merger Order*. Any CLEC that truly wants to serve the residential market can take advantage of that promotional offering.

^{25/} Specifically, the Commission directed the parties to submit evidence on "whether Ameritech's restriction on ordering new and additional (i.e. second line) loops in combination with unbundled switching and shared transport is appropriate and should be maintained."

combine UNEs in any way, shape, or form. According to the CLECs, however, the “plain language” of Section 251(c)(3) applies differently to state commissions, thus allowing them to impose the exact same requirements that, if imposed by the FCC, would be manifestly illegal. Interpreting the 1996 Act in that way would lead to chaos, or, as the Supreme Court put it, be a system of federal regulation that was both unprecedented and “surpassing strange” in that it would allow for ad hoc revision at any time by any state commission. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 n.6 (1999). Moreover, Illinois law requires the Commission to regulate “within the new framework of the federal telecommunications policy” ushered in by the 1996 Act (220 ILCS 5/13-102(e)), and right now the governing federal framework is that agencies cannot require incumbent LECs to combine UNEs for CLECs.^{26/} Accordingly, even if it were not beyond the scope of this case (which it is), the CLECs’ claim fails on the merits.

B. UNE-P Billing

The HEPO agreed with Ameritech Illinois and Staff that an October 2001 implementation date for CABS billing for UNEs is appropriate, rejecting the CLECs’ position that Ameritech Illinois should be required to implement a CABS billing format for UNEs by December 2000 or February 2001. HEPO, at 99. McLeod and AT&T except to this decision. *Jt. Small CLEC Exc.* at 87-88; *AT&T Exc.* at 49-52. In addition, while Staff agrees that the HEPO correctly concluded that October 2001 is an appropriate date for Ameritech Illinois to implement CABS, Staff requests

^{26/} The CLECs cannot defend their legal position that state commissions are supreme to the FCC in interpreting the 1996 Act, so they don’t even try to. Instead, they cite to recent decisions by the Wisconsin and Indiana decisions. Without getting into the many flaws in the reasoning of those decisions (where there is any reasoning at all), suffice it to say that both cases were wrongly decided as a matter of controlling federal law and, in any event, the significance of those cases will likely be debated at greater length in the investigation of Ameritech Illinois’ tariff in Docket No. 00-0700.

clarification as to whether a reporting requirement should be imposed upon Ameritech Illinois. As discussed below, the Commission should reject these exceptions.

McLeod excepts to the October 2001 deadline by arguing that until Ameritech Illinois implements the CABS billing format, CLECs will be unable to audit their bills for UNEs and that “they are in essence forced to pay bills without knowing whether they are accurate.” Jt. Small CLEC Exc. at 87. McLeod’s position should be rejected. As discussed in Ameritech Illinois’ Post-Hearing Comments (at 124-26), it is the data elements, not the billing format, that are required for auditing purposes. This is evidenced by the fact that the industry’s Ordering and Billing Forum (“OBF”) issues guidelines for data elements, not billing formats. *Id.* at 124; Tr. 333. Both the AEBS billing format, which Ameritech Illinois currently provides, and the EDI 811 billing format, which Ameritech Illinois plans to roll out in January 2001, provide many of the same data elements as CABS. Am. Ill. Post-Hearing Comments at 124-26. Accordingly, the evidence shows that CLECs will be able to audit their bills before CABS is finally implemented in October 2001. Thus, McLeod’s position that the CLECs are forced to pay their bills “in the dark” (Jt. Small CLEC Exc. at 87) is baseless, exaggerated, and contrary to the evidence.

McLeod also argues that Ameritech Illinois should be required to roll out the CABS billing format in the next 20 days because PacBell, an affiliate of Ameritech Illinois, will complete its conversion to CABS by the end of December 2000. Jt. Small CLEC Exc. at 87-88. The Commission should disregard McLeod’s argument because it ignores the evidence that PacBell began its conversion to synchronize its billing system with Southwestern Bell’s (“SWBT”) CABS system roughly *3 years ago*. Am. Ill. Post-Hearing Comments at 127; Tr. 375. McLeod also argues that “there is no technical reason why [Ameritech Illinois] cannot implement CABS prior to October

2001.” Jt. Small CLEC Exc. at 88. Once again, McLeod’s argument ignores Ameritech Illinois’ evidence that converting to the CABS billing format will require approximately 25,000 person hours – approximately 12 ½ employee years – and personnel with specialized skills to complete this technically complex task. Am. Ill. Post-Hearing Comments at 125; Response to Staff Data Request 73-5.03 (Cross Ex. 9); Tr. 370-72.

AT&T similarly excepts to the HEPO’s conclusion, claiming that the evidence demonstrates that implementation of CABS in Illinois can be completed in only three months. AT&T Exc. at 50-51. This argument should be rejected because it distorts the record evidence and assumes facts. For example, AT&T asserts that Ameritech Illinois’ witness Ms. Kagan testified that: the implementation of CABS will take approximately one year (12 months) in Illinois; approximately nine (9) months of definitional and developmental work necessary for CABS implementation has already been completed by Southwestern Bell; and Southwestern Bell (“SWBT”) and Ameritech Illinois use the same CABS system. *Id.* at 50-51.

AT&T apparently wants the Commission to believe that because 12 minus 9 equals 3, and that because SWBT and Ameritech Illinois eventually will have similar CABS systems, it will only take Ameritech Illinois 3 months to implement CABS billing. However, in order to reach this conclusion, AT&T must bootstrap their argument and (1) assume that the definitional and developmental work conducted by SWBT will seamlessly apply to Ameritech Illinois’ applications without modification; and (2) assume that migration from the ACIS format to the CABS format can indeed be completed within such a short time frame.

The evidence shows that such assumptions are incorrect. The interfacing and applications used by SWBT’s CABS system are different from those that will be used in Ameritech Illinois’

CABS system. Tr. 336-37. Thus, while Ameritech Illinois' and SWBT's versions of CABS may generally be similar, the version of CABS used by SWBT is not identical to the version that will be used by Ameritech Illinois. Tr. 337-38. The conversion to CABS in Illinois requires the creation of an interface from Ameritech Illinois' service order processor (ACIS) to CABS and the conversion of accounts from ACIS to CABS. Am. Ill. Post-Hearing Comments, Rebuttal Facts on Issue 73(b) (AI Ex. 26); Tr. 335. By contrast, SWBT utilizes a different service order processor, which uses a different application. Tr. 336-37. Thus, it will be necessary for Ameritech Illinois to design detailed software codes unique to its application. As described in the Rebuttal Facts submitted with Ameritech Illinois' Post-Hearing Comments on Issue 73(b) (§ 5), completing this task will require Ameritech Illinois to: define design and architecture plans to determine which software systems will be affected by the conversion; review, implement, and test software revisions; and migrate revised software in an orderly manner. Contrary to AT&T's contentions, the evidence shows that Ameritech Illinois' conversion to CABS billing is not simply a matter of duplicating definitional and developmental work previously accomplished by SWBT. The Commission should therefore reject AT&T's argument and adopt the HEPO's finding that, due to the complexity of the task, it would be "foolhardy" to require Ameritech Illinois to rush the CABS conversion. HEPO, at 100.

AT&T further contends that the Illinois POR should be amended to reflect Ameritech Illinois' commitment to implement CABS in order to ensure the fruition of "a commitment already riddled with vagueness and uncertainty." AT&T Exc. at 52. AT&T's unfounded assertion should be rejected because the commitment to provide CABS billing in Illinois is already set forth in the FCC POR. Tr. 373. Therefore, it would be unnecessary to require an additional clarification in the Illinois POR. Tr. 306-08.

Finally, although Staff agrees with the HEPO's conclusion that the October 2001 implementation date for CABS is appropriate, Staff requests that the HEPO clarify the associated reporting requirements imposed upon Ameritech Illinois. Specifically, Staff requests that an Ameritech Illinois officer verify all reports to be filed; all reports be filed in a form suitable for posting on the Commission's website; and the final Order specify that Ameritech Illinois' reports are public records available for inspection and copying. Staff Exc. at 50.

Ameritech Illinois opposes Staff's detailed reporting requirements because it is unclear what the reports would be used for or how they would help Ameritech Illinois implement CABS billing in October 2001. The danger in such reports, which would require substantial detail, is that they would be used by Staff – and, if made publicly available, by CLECs – to micromanage Ameritech Illinois' efforts. Such micromanagement is not necessary and has not been applied to other Ameritech Illinois commitments, so it is unclear why it should apply here. And even at best, the reports would impose another burden on the Ameritech Illinois personnel working to implement CABS and thus could interfere with those substantive efforts. If Staff wants to keep abreast of Ameritech Illinois' progress it can always consult with Ameritech Illinois informally, but the formality of officer-verified, website-available reports seems like overkill and is out of step with the Commission's usual approach to such issues. Accordingly, Staff's suggestion should be declined.